82-1457

CASE NO.

in the Supreme Court of the United States

October Term 1982

PARLIAMENT INSURANCE COMPANY,
Petitioner,

vs.

EDYTH LEFCOE,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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Filed: February 25, 1983.

QUESTION PRESENTED FOR REVIEW

In 1974, PARLIAMENT INSURANCE COMPANY entered into a fire insurance contract with MRS. LEFCOE that the company could cancel upon five days notice. The insurance policy was effective for three years, but MRS. LEFCOE elected to pay annual premiums. In 1975, MRS. LEFCOE paid no premium. The company cancelled in accordance with the conditions of the policy in June, 1975 after seeking a premium increase.

A rule promulgated by the Florida Department of Insurance in March, 1975 to meet an emergency in health care prohibited the cancellation of insurance policies for failure to pay increased premiums.

DID THE RULE AS APPLIED TO THE FIRE INSURANCE POLICY IN THIS CASE TO INVALIDATE PROPER CANCELLATION UNCONSTITUTIONALLY IMPAIR THE OBLIGATION OF THE CONTRACT?

LIST OF ALL PARTIES

Parliament Insurance Company

Mrs. Edyth Lefcoe

Kent Insurance Company, Successor to Parliament

Herbco, Inc., parent company

Marlboro Leasing, Inc., affiliated company

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TABLE OF AUTHORITIES

UNOFFICIAL REPORT PURSUANT TO SUPREME COURT RULE 21.1(d)

Parliament Insurance Co. v. Lefcoe, Case No. 81-6035 (11th Cir., filed January 19, 1983).

There is no official report at the time of filing this Petition in February, 1983.

JURISDICTIONAL STATEMENT

(i) On November 30, 1982, the United States Court of Appeals for the Eleventh Circuit affirmed the judgment entered against Parliament Insurance Company by the Federal District Court for the Southern District of Florida.

(iv) This Court's jurisdiction is based upon 28 U.S.C., Section 1254(1). The Eleventh Circuit's decision on the federal question of impairment of contract conflicts with this Court's decisions in *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978), *Worthen v. Thomas*, 292 U.S. 426 (1934) and *Home Building and Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934). The Eleventh Circuit's decision also conflicts with decisions from the Ninth and Eighth Circuits respectively. *In re LaFortune*, 652 F.2d 842 (9th Cir. 1980); *White Motor Corp. v. Malone*, 599 F.2d 283 (8th Cir. 1979), *aff'd mem.* 444 U.S. 911 (1979).

CONSTITUTIONAL PROVISIONS AND EMERGENCY RULE PURSUANT TO SUPREME COURT RULE 21.1(f)

United States Constitution, Article I, Section 10: No state shall . . . pass any . . . Law impairing the Obligation of Contracts. . . .

Florida Constitution, Article I, Section 10: No . . . law impairing the obligation of contracts shall be passed.

Emergency Rule 4ER75-1 issued by the Insurance Department of the State of Florida: No insurer may in this state, cancel or otherwise terminate any insurance contract or require execution of a consent to rate endorsement during the stated policy term for the purpose of offering to issue or issuing a similar or identical contract to the same insured at a higher premium rate, or continuing an existing contract at an increased premium. Pursuant to Section 626.970, Florida Statutes, this rule does not apply to life or disability insurance.

STATEMENT OF CASE

Jurisdiction in Federal District Court for the Southern District of Florida was based on 28 U.S.C., Section 1332, diversity of citizenship (A. 2, App. 12). MRS. LEFCOE claimed an amount in excess of $10,000 exclusive of interest and costs (A. 2, App. 12).

On August 21, 1981, after a non-jury trial, the district court judged PARLIAMENT INSURANCE COMPANY liable on a fire insurance policy for half of a $126,250 judgment in favor of MRS. EDYTH LEFCOE

for losses stemming from a fire in April, 1976 (A. 2).[1] The insurance company had cancelled MRS. LEFCOE'S policy in accordance with the conditions of the policy on June 8, 1975 (A. 4), and MRS. LEFCOE paid no premium in 1975 (Tr. 29). However, the district court reasoned that the insurance company could not cancel the policy after unsuccessfully seeking a premium increase (A. 2), because of the following emergency rule promulgated by Florida's Insurance Department on March 14, 1975 to meet an emergency in health care:

> No insurer may in this state, cancel or otherwise terminate any insurance contract or require execution of a consent to rate endorsement during the stated policy term for the purpose of offering to issue or issuing a similar or identical contract to the same insured at a higher premium rate, or continuing an existing contract at an increased premium. Pursuant to Section 626.970, Florida Statutes, this rule does not apply to life or disability insurance.

Florida Department of Insurance Emergency Rule 4ER75-1.

The insurance commissioner stated the reasons for the emergency rule:

> (1) It has come to my attention that insurers writing professional liability insurance,

[1]Highlands Insurance Company, who also insured the property, was a defendant in a consolidated case in the district court and was to pay the other half of the judgment. Highlands settled with MRS. LEFCOE and is not involved in this Petition (A. 1, App. 5).

particularly medical malpractice insurance, are attempting to increase premium rates during the policy term. I am advised that at least one insurer in the state of Florida intends to accomplish such an increase in premiums by cancelling all policies issued to doctors and the Florida Hospital Association in the immediate future before a Hearing on this Emergency Rule could be conducted.

(2) This practice would result in a circumvention of statutory requirements concerning justification and approval of premium rate charges with resultant losses of participants' funds and the possible abridgment of the availability of health care services in this state and, therefore, presents an immediate danger to the general public health, interest and welfare of Florida Citizens.

The reasons for concluding that the procedure is fair under the circumstances are as follows:

(1) The immediacy of the danger to the general welfare of Florida citizens described above necessitates the implementation of this Rule at the earliest possible time.

* * *

(A. 1, App. 3-4)

Attorneys' fees of $20,000 were assessed against the insurance company in favor of MRS. LEFCOE (A. 3).

The insurance company appealed to the United States Court of Appeals for the Eleventh Circuit, which heard oral argument on October 4, 1982 and rendered its decision on November 30, 1982, affirming the district court (A. 1). The circuit court held:

1. That the insurance company could not cancel the policy after unsuccessfully seeking a premium increase.

and

2. That there was no substantial constitutional question regarding contract impairment because the insurance company "could have cancelled its policy of insurance upon proper notice at any time."

(A. 1, App. 6-7). Such doublespeak on a federal question conflicts with this Court's decisions in *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978) and *Worthen v. Thomas*, 292 U.S. 426 (1934). It also conflicts with decisions of the Ninth and Eighth Circuits respectively, viz. *In re LaFortune*, 652 F.2d 842 (9th Cir. 1980) and *White Motor Corp. v. Malone*, 599 F.2d 283 (8th Cir. 1979), *aff'd mem.* 444 U.S. 911 (1979). Such conflict constitutes the basis for this Petition for Writ of Certiorari.

The Eleventh Circuit also ruled that Emergency Rule 4ER75-1 applied to fire insurance policies. It is not necessary for the Court to reach this question.

The Eleventh Circuit's mandate issued January 19, 1983.

On May 26, 1974, EDYTH LEFCOE entered into a three year fire insurance contract with the insurance company to cover an apartment-hotel, which she owned (A. 5). The insurance policy provided for cancellation as follows:

> This policy shall be cancelled at any time at the request of the insured, . . . This policy may be cancelled at any time by this Company by giving to the insured a five days' written notice of cancellation. . . .

(A. 5, App. 20 Cancellation of policy).

MRS. LEFCOE paid one year's premium in 1974. She could have pre-paid three years' premium and her rates would not have changed during the life of the policy (Tr. 169-70). It was the custom in the industry to review premium rates every year if premiums were paid in yearly installments (Tr. 170-71).

In 1975, the insurance company reviewed MRS. LEFCOE'S apartment-hotel and determined that since the building was erected in 1920 (Tr. 116), was located in a deteriorating neighborhood and was a firetrap, that it was a substandard risk (Tr. 174, A. 6). The insurance company provided coverage for substandard risks, but it could not do so at rates published in the manual (A. 6) put out by Insurance Services Offices, a national organization (ISO Manual).

The agent from the insurance agency which sold the policies testified:

> When an account appears at such a bad location, it's a bad account, which old hotels are in the downtown area. As you know, they're firetraps; and the only reason that these were written at manual rates to begin with was because of the pressure of Mr. Ackerman (owner of the agency), who had a love for the LEFCOES, and who persuaded the companies to do this, but it was against good underwriting practice.

(A. 7).

Highlands Insurance Company cancelled its policy with MRS. LEFCOE at the same time PARLIAMENT did, because "the risk failed to meet our minimum underwriting requirements" (Tr. 229) and was a substandard risk (Tr. 229-30).

MRS. LEFCOE paid no premium in 1975 (Tr. 29). Her attorney stipulated that she received the notice of cancellation (A. 4) dated June 8, 1975 (Tr. 26), but she testified that she never sought other insurance (Tr. 61).

MRS. LEFCOE testified that in May, 1975 she received a communication (A. 8) from her insurance agent regarding an increase in premiums on her substandard risk (Tr. 53-54). There was conflict between her trial testimony and her deposition testimony regarding what action, if any, she took after receiving this communication (Tr. 54, 69-71). It is uncontroverted that she never looked for other insurance after receiving the cancellation notice dated June 8, 1975 (Tr. 61).

On April 3, 1976, MRS. LEFCOE'S apartment-hotel burned down. She sued upon the cancelled insurance policies and the district court awarded her judgment in the amount of $126,250 plus attorneys' fees and costs.

The Eleventh Circuit affirmed.

MRS. LEFCOE'S apartment-hotel had sustained previous fire damage in April, 1975 for which the insurance companies paid $83,750 (Tr. 27).

SUMMARY OF ARGUMENT

The circuit court denied the insurance company the means of enforcing its policy by retroactively applying a 1975 emergency rule tailored to meet a health care crisis to the 1974 fire insurance policy. The contract was substantially impaired because the insurance company's cancellation in accordance with policy conditions was invalidated, and the company was held liable for a fire, which occurred during a year when no premium had been paid. Such an impairment of contract threatens the insurance company's solvency and its ability to pay benefits. No emergency in fire insurance was demonstrated to justify this substantial impairment.

This Court must grant certiorari because the Eleventh Circuit's decision on the federal question conflicts with this Court's decisions in *Allied Structural Steel* and *Worthen*. It also conflicts with decisions from other circuits, viz. *LaFortune* and *White Motor Corp.*

ARGUMENT

WHETHER THE EMERGENCY RULE TAILORED TO MEET A HEALTH CARE CRISIS UNCONSTITUTIONALLY DENIED THE INSURANCE COMPANY THE MEANS OF ENFORCING ITS FIRE INSURANCE POLICY.

The circuit court erred in retroactively applying a 1975 emergency rule tailored to meet a health care crisis to a 1974 fire insurance policy, so as to substantially impair the latter. The insurance company was held liable for a fire which occurred during a period when no premium was paid. The insurance company's cancellation in accordance with policy conditions was invalidated. No emergency in fire insurance was demonstrated to justify this substantial impairment.

The Eleventh Circuit's decision on the federal question conflicts with this Court's decisions in *Allied Structural Steel*, *Worthen*, and *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934). It also conflicts with decisions from other circuits, viz. *LaFortune* from the Ninth and *White Motor Corp.* from the Eighth.

The fire insurance policy could be cancelled by the company *for any reason* on five days' notice (A. 5). The emergency rule was tailored to meet an emergency in the availability of health care services. Applying this rule to a fire insurance contract entered into almost a year before the rule was promulgated altered substantial rights of the insurance company. *Worthen* at 432. The Eleventh Circuit denied the insurance company the means to enforce its contract. Id. at 433.

In *Worthen*, insurance monies were placed beyond the reach of creditors by operation of state statute. In the instant case, the insurance company was forced to provide coverage to a substandard risk at a rate which violated good underwriting practice (Tr. 174, 229; A. 7). *In fact, the insured paid no premium at all for the year in which the fire occurred and she recovered a $126,000 judgment.* The solvency of the insurance company and its ability to pay benefits is jeopardized by this application of the emergency rule.

As in *Worthen*, the rule as applied in the instant case, "was not limited to the emergency and set up no conditions apposite" to the emergency. Id. at 432. There was no showing that there was an emergency in fire insurance and the rule was not limited to health care. In the instant case as in *Worthen*, there were no limitations as to time, amount, circumstances and need. Id. at 434. MRS. LEFCOE'S apartment-hotel had been built in 1920 (Tr. 116), it was in a deteriorating neighborhood and was a firetrap (Tr. 174). Yet, the insurance company was compelled to carry it at standard rates for a period of two years, even when no premium at all was paid, because the emergency rule was retroactively applied. *Contra, Blaisdell* where mortgage moratorium legislation was tailored to the emergency and was limited to the emergency's duration. Therefore, it was held not to be an unconstitutional impairment of mortgage contracts.

This Court must reach the same conclusion as it did in *Worthen*: The prohibition against premium increases applied to a fire insurance policy dated almost a year before the prohibition was created "constitutes an unwarrantable interference with the obligation of

contracts in violation of the constitutional provision." Id. at 431-32. *U.S. Const.*, art. I, sec. 10; *Fla. Const.*, art. I, sec. 10.

The position of the company in the instant case is similar to that of the company in *Allied Structural Steel*. In *Allied*, a state statute compelled employees' pension rights to vest at a time not provided for in the company's pension plan. The company in *Allied* had no reason to anticipate early vesting and was compelled to exceed bargained-for expectations. Id. at 246. n. 18. Moreover, an express term of the pension plan was nullified. Id. In the instant case, the insurance company had no reason to anticipate that it would be prohibited from cancelling its contract in accordance with policy conditions. The insurance company was compelled to exceed bargained-for expectations when it had to provide coverage to a substandard risk at standard rates. In fact, it was held liable when the insured had not paid her yearly premium. Thus, an express term of its policy was nullified. Just as in *Allied*, the company's obligations were changed in an area where reliance was vital, the funding of claims. Id. at 246.

As in *Allied*, there was no showing that "this severe disruption of contractual expectations was necessary to meet an important general social problem." Id. at 247. The problem was in health care not in fire insurance. Therefore, the Eleventh Circuit's decision in the instant case conflicts with *Allied* and this Court must reverse.

> If the Contract Clause is to retain any meaning at all, . . . it must be understood to impose

> *some* limits upon the power of a state to abridge existing contractual relationships, even in the exercise of its otherwise legitimate police power.

Allied at 242 (emphasis in the original). This is a case in which to impose such limits.

The decision of the Eleventh Circuit also conflicts with the Ninth Circuit's decision in *LaFortune*. In *LaFortune*, a California statute automatically exempted dwellings from creditors' liens, regardless of whether Homestead had been declared. The Ninth Circuit determined that no necessity for retroactive application of the statute had been shown. In the instant case, there was not even a representation that fire insurance was unavailable. Therefore, as in *LaFortune*, it must be held that the emergency rule "cannot constitutionally be applied retroactively." Id. at 848. *See also White Motor Corp.* following *Allied Structural Steel*.

Application of the emergency rule substantially impaired the contractual obligations of the fire insurance policy. There was no reason to retroactively apply the emergency rule to the fire policy. Therefore, the Contracts Clause was violated and the decision of the Eleventh Circuit must be reversed.

CONCLUSION

The Court must grant certiorari in this case based on the facts and the applicable law.

Respectfully submitted,

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CASE NO.

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PARLIAMENT INSURANCE COMPANY,
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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 81-6035

EDYTH LEFCOE,
Plaintiff-Appellee,

versus

PARLIAMENT INSURANCE COMPANY,
A Corporation,
Defendant-Appellant.

Appeals from the United States District Court for the Southern District of Florida

(November 30, 1982)

Before TJOFLAT, KRAVITCH and HATCHETT, Circuit Judges.

PER CURIAM:

On May 26, 1974, Edyth Lefcoe, appellee, the owner of the Sargaosa apartment building, purchased fire insurance coverage from Parliament Insurance Company and Highlands Insurance Company. On March 14, 1975, the Insurance Department of the State of Florida issued Emergency Rule 4ER75-1 and filed with the Secretary of State a statement establishing the existence of an emergency. The rule read as follows:

No insurer may in this state, cancel or otherwise terminate any insurance contract or require execution of a consent to rate endorsement during the stated policy term for the purpose of offering to issue or issuing a similar or identical contract to the same insured at a higher premium rate, or continuing an existing contract at an increased premium. Pursuant to Section 626.970, Florida Statutes, this rule does not apply to life or disability insurance.

The statement showing why the rule was promulgated and the existing emergency stated:

Pursuant to the provisions and requirements of Section 120.54(8), Florida Statutes and Rule 4.38.21. Rules of the Department of Insurance, in justification of the adoption of Emergency Rule Number 4ER75-1, a certified copy of which accompanies this statement, to be effective upon filing with the Department of State, the undersigned Insurance Commissioner and Treasurer, as head of the Department of Insurance, hereby finds that the adoption of said rule is necessary for the immediate preservation of the public health, peace, safety or general welfare.

The facts constituting said emergency are the following:

(1) It has come to my attention that insurers writing professional liability insurance, particularly medical malpractice insurance, are

attempting to increase premium rates during the policy term. I am advised that a least one insurer in the state of Florida intends to accomplish such an increase in premiums by cancelling all policies issued to doctors and the Florida Hospital Association in the immediate future before a Hearing on this Emergency Rule could be conducted.

(2) This practice would result in a circumvention of statutory requirements concerning justification and approval of premium rate charges with resultant losses of participants' funds and the possible abridgment of the availability of health care services in this state and, therefore, presents an immediate danger to the general public health, interest and welfare of Florida Citizens.

The reasons for concluding that the procedure is fair under the circumstances are as follows:

(1) The immediacy of the danger to the general welfare of Florida citizens described above necessitates the implementation of this Rule at the earliest possible time.

(2) Notice of the effect of this Rule will immediately be mailed to all insurers doing business in Florida, to all other interested parties, and will be distributed to the news media.

On April 20, 1975, the Sargaosa Apartments were damaged by fire. Edyth Lefcoe filed claim against

Parliament Insurance Company. During litigation over the amount to be paid, the claim was settled. On April 25, 1975, Edyth Lefcoe was notified that there would be an increase in premiums. She declined to pay the increased premium which resulted in the cancellation of her policy on June 8, 1975. On April 3, 1976, another fire damaged the Sargaosa apartment building. Parliament refused to pay the claim because of its earlier cancellation of the policy.

Lefcoe brought suit in the district court to recover her loss for the destruction of the apartment building. A final judgment for Lefcoe was entered against Parliament.*

The only issue before the court is whether the Florida Department of Insurance Emergency Rule 4ER75-1 applies to the cancellation of fire insurance policies.

Parliament asserts that it was not prohibited from cancelling the policy of insurance on the apartment building because Emergency Rule 4ER75-1 was not intended to apply to fire insurance policies. Parliament relies upon the statement of justification for the issuance of the rule filed with the Secretary of State, and argues that the rule was intended to prevent the cancellation of medical malpractice and hospital liability policies. Of special significance, Parliament points out that no place in the statement of justification is there any mention of problems faced by the people of the State of Florida

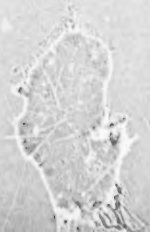
*Although a judgment was also entered against Highlands Insurance Company in this joint trial, Lefcoe and Highlands settled the matter.

which could be solved by preventing cancellation of fire insurance policies. In other words, Parliament urges the court to construe the statute in light of the statement filed with the Secretary of State and all surrounding circumstances.

Lefcoe argues that the rule is definite, certain, and clear; therefore, no interpretation is necessary. Lefcoe urges the court not to resort to the rules of construction of a statute or administrative rule because such is unnecessary in this case. Lefcoe insists that we apply the literal meaning of the language of the rule.

While the language of the rule is broad, it is equally clear and unambiguous. No construction is necessary. The trial court recognized its duty to apply the literal meaning of the rule. *Alligood v. Florida Real Estate Commission*, 156 So.2d 705 (Fla. Dist. Ct. App. 1963); *State v. Egan*, 287 So.2d 1 (Fla. 1973). In addition, the Emergency Rule specifically excluded other classes of insurance, but did not exclude fire policies.

Parliament also raised a constitutional issue: Whether the Emergency Rule prohibiting cancellation of fire insurance policies, based upon increased premiums, was an unconstitutional exercise of the power of the state amounting to an impairment of contract rights in violation of the Constitution of the United States and the Constitution of the State of Florida. We agree with the trial court that no substantial constitutional question is raised because Parliament's rights to cancellation under the contract continued intact. Parliament could



have cancelled its policy of insurance upon proper notice at any time. It simply could not seek a premium increase during the prohibited period and cancel its policy for failure of the insured to pay the increased premium.

Accordingly, we affirm.

AFFIRMED.

[FILED AUG 21 1981]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 76-982-CIV-EBD

EDYTH LEFCOE,

Plaintiff,

-vs-

HIGHLANDS INSURANCE COMPANY, a corporation,
Defendant.

CASE NO. 77-1955-CIV-EBD

EDYTH LEFCOE,

Plaintiff,

-vs-

PARLIAMENT INSURANCE COMPANY, a corporation,
Defendant.

THIS CAUSE came before the Court for trial; a jury trial was waived by stipulation of all parties. Having considered the evidence presented and the arguments of counsel, the Court does make and enter the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The plaintiff, EDYTH LEFCOE, owned certain improved real property in Miami, Florida, known as the Saragossa Apartment Hotel (Hotel).

2. The defendant, HIGHLANDS INSURANCE COMPANY, (Highlands), issued a fire insurance policy to the plaintiff providing coverage for the Hotel. This policy was issued on September 1, 1973 and extended for a term of three (3) years.

3. The defendant, PARLIAMENT INSURANCE COMPANY, (Parliament), issued a fire insurance policy to the plaintiff providing coverage for the Hotel. This policy was issued on May 26, 1974 and extended for a term of three (3) years.

4. Each policy provided coverage in the amount of $105,000.00 for a total coverage of $210,000.00.

5. The Ackerman Insurance Agency was a duly appointed agent for both defendant insurers.

6. The Hotel was damaged by a fire which occurred on April 20, 1975. As a result of this fire, the plaintiff filed claims with both Highlands and Parliament to recover for the damages sustained. Both insurers contested these claims.

7. On April 3, 1976, prior to the receipt of the payment of the settlement for the April 20, 1975 fire, and before the premises had been repaired, the Hotel was destroyed by yet another fire. The destruction to the structure caused by this fire was complete.

8. Parliament paid Edyth Lefcoe $41,875.00 for the loss sustained in the first fire.

9. Highlands paid Edyth Lefcoe $41,875.00 for the loss sustained in the first fire.

10. In a letter dated April 2, 1975, which was written on the stationery of the Ackerman Insurance Agency, Mrs. Lefcoe was informed by Ackerman's Vice President, T.T. Sandler, of the following:

> We have currently been advised by the carriers, captioned, of the fire hazard coverage on your apartment building, that due to the age of the building and with cooking and space heaters in same that this risk does not really meet — standard manual business.
>
> Therefore, both companies have advised us that they are not willing to continue coverage unless we increase the rates by a 25% surcharge. This will raise the annual premium from $794.00 to approximately $923.00 annually on each policy.
>
> Should this meet with your approval, sign and return the enclosed forms where indicated. Please keep in mind that failure to accept the increase will most likely result in cancellation of these policies and that we have no other outlet with which to replace coverage at standard rates on a building of this age.

This letter was referenced: Saragossa Apts., Parliament #AF25012 and Highlands #F765602. These policy numbers

correspond to the fire insurance policies issued by the respective carriers for coverage on the Hotel.

11. The plaintiff refused to pay the increase in premiums as demanded by the defendant insurers.

12. Notice of cancellation by both Parliament and Highlands was received by the plaintiff at least ten (10) days prior to June 8, 1975, the effective date of the cancellations. These written notices of cancellation conformed to the manner prescribed in the insurance contracts.

13. On March 14, 1975, the Insurance Commissioner of the State of Florida issued Emergency Rule 4ER75-1 which provides as follows:

> No insurer may in this state, cancel or otherwise terminate any insurance contract or require execution of a consent to rate endorsement during the stated policy term for the purpose of offering to issue or issuing a similar or identical contract to the same insured at a higher premium rate, or continuing an existing contract at an increased premium. Pursuant to Section 626.970, Florida Statutes, this rule does not apply to life or disability insurance.

This rule had an effective operation period of ninety days.

14. State of Florida, Department of Insurance Emergency Rule Number 4ER75-1 was in effect during the time the increased premiums were demanded as well as when the notices of cancellation were issued.

15. Both Highlands and Parliament issued cancellation notices because of the failure of the plaintiff to pay the additional premiums as demanded.

16. During the period of time between the first fire and the second fire, the plaintiff took measures to preserve the damaged structure from further destruction due to vandalism and the elements and to prevent it from becoming a hazard to trespassers and passers-by.

17. Although the premises were uninhibited for over sixty successive days immediately prior to the second fire in the sense that no living being was living there, the property was looked after by a watchman and a guard dog which had been retained by the plaintiff.

CONCLUSIONS OF LAW

1. Jurisdiction is based upon diversity of citizenship pursuant to 28 U.S.C. §1332(a). The matter in controversy has a value in excess of $10,000.00 exclusive of interest and costs.

2. As this Court has previously ruled when presented with the issues on the defendant's motion for summary judgment, Emergency Rule 4ER75-1 is a proper exercise of the regulatory powers of the Florida Department of Insurance, it does not offend either the Constitution of the United States or the State of Florida, and its operation is applicable to fire insurance policies.

3. Both Highlands and Parliament had the right, at their election, under the terms of the insurance contract, to simply cancel their insurance coverage during the life of the policy.

4. Emergency Rule 4ER75-1 did not deprive them of this right. The Rule was merely an attempt to prevent a policy cancellation where such a cancellation was based upon a demand for increased premiums within the coverage period.

5. The attempt by the defendant insurers to exact additional premiums based upon threats of cancellation was a violation of Emergency Rule 4ER75-1.

6. Because the defendant insurers based their cancellations of plaintiff's insurance coverage upon her refusal to agree to their demands for increased premiums an otherwise proper cancellation becomes improper.

7. Since the operation of Emergency Rule 4ER75-1 renders the attempted cancellations ineffective and because the terms of the insurance contracts had not otherwise expired, both policies were in full force and effect in April, 1976, the time of the second fire.

8. In a situation where premises are damaged by fire rendering it uninhabitable and where the premises are again the subject of yet another fire before it can be made habitable, assuming no fault or lack of diligence on the part of the insured, the vacancy or unoccupancy clause of the insurance contract has not been breached. It would be unreasonable and self contradicting to provide that a building must be occupied during a period when the parties knew, as they did here, that it could not be occupied. *American Central Insurance Co. of St. Louis v. McHose*, 66 F.2d 749 (3rd Cir. 1933).

9. Where an insured building is completely destroyed by fire, the amount recoverable is governed by the valued policy law and depreciation is not to be applied against the cost of repair to determine the amount recoverable. *Sperling v. Liberty Mutual Insurance Co.*, 281 So.2d 297 (Fla. 1973).

10. The valued policy statute of Florida, FLA. STAT. §627.702, is applicable to the situation presented here.

11. "When there are several permissible concurrent policies of fire insurance and there is a total destruction by fire of the insured premises, the aggregate amount of the insurance written, or the sum of the face amounts in the policies for this peril, is conclusive as to the true amount of the loss and measure of damages when so destroyed." *Springfield Fire and Marine Insurance Co. v. Boswell*, 167 So.2d 780 (Fla. DCA 1st 1964).

12. Proof of loss statements have been waived by the defendant's denial of liability. *Guarantee Mutual Fire Insurance Co., v. Jacobs*, 57 So.2d 845, 848 (Fla. 1952).

13. The plaintiff is entitled to recover as damages for the loss of improvements under the terms of the policies the sum of $126,250.00. This figure is calculated by subtracting the amount paid after the first fire ($83,750.00) from the total value of both policies ($210,00.00).

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

ORDERED and ADJUDGED that judgment is hereby entered in favor of the plaintiff, EDYTH LEFCOE and against the defendants, HIGHLANDS INSURANCE COMPANY and PARLIAMENT INSURANCE COMPANY, in the amount of $126,250.00, this award to be paid in equal shares by each defendant. It is further

ORDERED and ADJUDGED that the plaintiff, EDYTH LEFCOE, shall recover reasonable attorney's fees together with the costs of this action.

DONE and ORDERED this 21st day of August, 1981.

/s/ Edward B. Davis
UNITED STATES DISTRICT COURT JUDGE

Copies Furnished to:

John W. Prunty, Esq.
Pyszka, Kessler
Jesse W. Miller, Esq.

[FILED OCT 21 1981]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 77-1955-Civ-EBD

EDYTH LEFCOE,

Plaintiff,

vs.

PARLIAMENT INSURANCE COMPANY, a corporation,

Defendant.

ORDER ON ATTORNEY'S FEES

THIS CAUSE came before the Court on Motion of counsel for EDYTH LEFCOE for an award of attorney's fees and the Court having reviewed the file and being otherwise fully informed in the matter hereby determines that the sum of TWENTY THOUSAND DOLLARS ($20,000.00) is a reasonable fee to be allowed Plaintiff's attorneys in this cause;

It is, therefore, ORDERED that the Plaintiff, EDYTH LEFCOE, do have and recover Judgment in the sum of TWENTY THOUSAND DOLLARS ($20,000.00) from Defendant, PARLIAMENT INSURANCE COMPANY, as attorney's fees payable to the attorneys for the Plaintiff, Prunty, Ross, Olsen & Israel.

DONE and ORDERED at Miami, Dade County, Florida, this 22d day of October, 1981.

/s/ Edward B. Davis

JUDGE, UNITED STATES
DISTRICT COURT

Conformed copies furnished to:
Prunty, Ross, Olsen & Israel
Jesse W. Miller, Esq.
Pyszka & Kessler, P.A.

Post Office Department

RECEIVED FROM:

ONE PIECE OF ORDINARY MAIL ADDRESSED

TO

INSURED

THIS RECEIPT DOES NOT PROVIDE FOR INDEMNIFICATION BY POSTMASTER.

INSURANCE COMPANY

OF

NOTICE OF CANCELLATION

MAIL THIS COPY TO THE COMPANY'S SUPERVISING OFFICE AT ONCE

POLICY NUMBER	ISSUED AT
AF 2[illegible]2	Miami, Florida

a Surety, a Stock, 23 unit apartment Bldg.
at 7[illegible] n.w. 3rd St., Miami, Fl.

CANCELLATION TO TAKE EFFECT (X ONE)

☐ AT NOON

☐ 12:01 A.M. STANDARD TIME

NO. DAY YEAR

YOU ARE HEREBY NOTIFIED THAT THE ABOVE POLICY IS HEREBY CANCELLED IN ACCORDANCE WITH THE CONDITIONS OF THE POLICY. SAID CANCELLATION TO BE EFFECTIVE ON AND AFTER THE HOUR AND DATE MENTIONED ABOVE.

THE EXCESS PAID PREMIUM ABOVE THE PRO-RATA PREMIUM FOR THE EXPIRED TERM (IF NOT TENDERED) WILL BE REFUNDED UPON DEMAND.

CANCELLED

165.00 Short Rate Flat

Pro-Rata

DATE 6-8-55

REASON Company request

SENT TO COMPANY 6-8-55

MORTGAGEE OR LIEN HOLDER

CERTIFICATION

I HEREBY CERTIFY THAT I PERSONALLY MAILED IN THE U. S. POST OFFICE AT THE PLACE AND TIME STAMPED HEREON, A NOTICE OF CANCELLATION, AN EXACT LAMINON COPY OF WHICH APPEARS ABOVE, AND AT SAID TIME RECEIVED FROM THE U. S. POST OFFICE THE RECEIPT (FORM 3817) HERETO ATTACHED.

SIGNED THIS 27 DAY OF May 19 55

SIGNATURE Carl Lampl

COMPANY'S COPY OF INSURED'S NOTICE

No. AF 25012

Parliament INSURANCE COMPANY
CHICAGO, ILLINOIS — A STOCK COMPANY, HEREIN CALLED THE COMPANY

DECLARATIONS — Renewal of

Name of Insured : Lilyth Lefcoe
Saragosa Apartments
221 No 3rd Street
Miami, FL

ADDRESS (Number & Street, Town, County & State)

Policy Period: From 5-26-74 To 5-26-77 3 Years

Agency: Ackerman Insurance Agency, Inc.
No. 19 W. Flagler St., #624
City, Miami, FL 33130

AAA AGENCY, INC.
TEL. 371 2611
19 W. FLAGLER STREET
MIAMI, FLORIDA 33130

among the same property read exactly alike. If they do not, they should be made uniform at once.

INSURANCE IS PROVIDED AGAINST ONLY THOSE PERILS AND FOR ONLY THOSE COVERAGES INDICATED BELOW BY A PREMIUM CHARGE AND AGAINST OTHER PERILS AND FOR OTHER COVERAGES ONLY WHEN ENDORSED HEREON OR ADDED HERETO.

AMOUNT	RATE	PREMIUM If Paid in Full at Inception	PREMIUM If Paid in Installments: Amount Due at Inception	PREMIUM If Paid in Installments: Amount Due at Each Subsequent Installment	PERILS Insured Against and Coverages Provided (Insert Name of Each)
$ 105,000	$ .132	$	$ 139.00	$ 139.00	FIRE AND LIGHTNING
"	$ .624	$	$ 655.00	$ 655.00	EXTENDED COVERAGE
	$	$	$	$	Incl. Vand
	$	$	$	$	
		TOTALS $	$ 794.00	$ 794.00	
$ 2382.00		TOTAL PREMIUM FOR POLICY OR INSTALLMENT DUE			
		POLICY FEE $			
		TAX $			
		TOTAL $			

Item No.	Amount, Face or Par and If Amended for Origin, or Other Face	Per Cent of Co Insurance *Applicable	DESCRIPTION AND LOCATION OF PROPERTY COVERED Show construction, type of roof and occupancy of building(s) covered or containing the property insured. If covered in a building, state number of building.
1 - $	105,000	80%	On the three story, 23 units, masonry, composition roof apartment building (known as Saragossa Apts) situate: 221 n/s NE 3rd Street, Miami, Dade, Florida

Subject to Form No(s). attached hereto (insert Form Numbers and Edition Dates) LLOF6(12/70), [illegible]6-3(12/70)

Mortgage Clause. Subject to the provisions of the mortgage clause attached hereto, less, if any, on building items, shall be payable to (insert Name(s) of Mortgagee(s) and Mailing Address(es)) nil

Countersignature Date 6-11-74 Agency at Miami, Fl Ackerman Insurance Agency, Inc.

Countersigned by Leo Ackerman Agent

IN CONSIDERATION OF THE PROVISIONS AND STIPULATIONS HEREIN OR ADDED HERETO AND Of the premium above specified, this Company, for the term of years specified above from inception date shown above At Noon (Standard Time) to expiration date shown above At Noon (Standard Time) at location of property involved, to an amount not exceeding the amount(s) above specified, does insure the insured named above and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured against all DIRECT LOSS BY FIRE, LIGHTNING AND BY REMOVAL FROM PREMISES ENDANGERED BY THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described herein while located or contained as described in this policy or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this Company.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

Parliament INSURANCE COMPANY
CHICAGO, ILLINOIS — A STOCK COMPANY, HEREIN CALLED THE COMPANY

PAP 1 673

PLAINTIFF'S EXHIBIT 1

A. 5, App. 20

No. 906 S
Fla. Ex. S C
(Revised 1970)

WINDSTORM EXTERIOR PAINT AND WATERPROOFING EXCLUSION CLAUSE

It is hereby stipulated that coverage under this policy does not include damage caused to any structure by windstorm to paint or waterproofing material applied to the exterior of the building or structure(s) insured hereunder. The issue of paint or waterproofing material, being excluded from the coverage of these clauses, shall not be considered in the determination of actual cash value when applying the [illegible] clause, if same applicable, to loss from windstorm.

Name of Agency. The "attaching" portion may be torn off if the clause is attached when the policy is issued.

Attached to and forming part of Policy No. _____ of the

_____ name of insurance company _____

issued at its _____ office in _____ by _____ Agent(s).

Dated _____ _____ Agent

No. 906-S (12-70) (Fla.-Ex.-S.C.)

No. 906-S (12-70) (Fla.-Ex.-S.C.)

[illegible] Houses, Y. M. C. A., Y. W. C. A., and Risks of Similar Occupancy, except Dwellings.)

Optional Co-Insurance Contract

Insurance attaches only to those items described on the first page of this policy for which an amount is shown in the space provided therefor and not exceeding said amount.

1. **Building Coverage**—When the insurance under this policy covers a BUILDING occupied as described on the first page of this policy, such insurance shall include stationary or permanent fixtures while contained therein or attached thereto, also the following items, if the property of the owner of the building and in actual use solely for its maintenance and while located thereon: (1) Hose and other fire extinguishing apparatus, (2) Floor coverings when fastened to floors or walls, (3) Refrigerators and refrigerating equipment, (4) Gas and electric cooking or heating equipment, (5) Window shades, screens, and storm doors, windows or shutters all belonging to said building and attached to or stored therein, (6) Fuel contained and intended for use therein, (7) Employees' uniforms and janitors' supplies, also, up to 1% of the insurance under this item of this policy covering on property described (1) through (7), while located on the described premises, except as otherwise excluded.

2. **Furniture, Equipment and Supplies Coverage**—When the insurance under this policy covers FURNITURE, EQUIPMENT and SUPPLIES it shall include all such items not covered under Paragraph 1 pertaining to the occupancy described on the first page of this policy and only while contained therein, except as otherwise excluded. Also, at the option of the Insured, coverage hereunder shall include personal effects of the Insured while contained in the described building and not otherwise covered. Motor vehicles, boats and aircraft are not covered hereunder.

3. **Off-Premises Coverage Extension**—Provided the 80% or higher co-insurance clause applies, the Insured may apply up to 2% of the amount of insurance applicable to each item of insurance covered under this policy, but not exceeding $1,000 under each item, to cover the described property, other than merchandise or stock (raw, in process, or finished), while temporarily removed from the described premises for purposes of cleaning, repairing, reconstruction or restoration.

This extension of coverage shall (a) not apply to property in transit nor to property on any premises owned, leased, operated or controlled by the Insured, (b) not apply except as excess over the amount due from any other insurance covering the property, whether collectible or not, and (c) in no wise inure directly or indirectly to the benefit of any carrier or other bailee.

If the Insured elects to apply this optional extension of coverage, this Company shall not be liable for a greater proportion of any loss than would have been the case if all fire insurance policies covering the described property had contained an identical optional extension of coverage and the same elections were made under all such policies.

4. **Co-Insurance**—It is a part of the conditions of this policy, and the basis upon which the rate of premium is fixed, that the Insured shall at all times maintain insurance on each item of property covered by this policy of not less than the percentage specified on the first page of this policy, of the actual cash value thereof, and that, failing so to do, the Insured shall be an insurer to the extent of such deficit, and in that event shall bear his, her or their proportion of any loss.

In the event that the aggregate claim for any loss is less than $10,000.00 and also less than 5% of the total amount of insurance upon the property described herein at the time such loss occurs, the Insured shall not be required to furnish any inventory of the undamaged property to establish the actual cash value referred to in the Co-Insurance Clause. Nothing herein shall be construed to waive the application of the Co-Insurance Clause. If the insurance under this policy be divided into two or more items, the foregoing shall apply to each item separately.

Co-Insurance Contract—The rate charged in this policy is based upon use of a Co-Insurance clause attached hereto with the consent of the Insured.

NOTE—The above Co-Insurance provisions are NOT applicable unless a percentage amount (75 or higher) is inserted on the first page of this policy.

5. **Foundation Exclusion (Applicable to Building Coverage only)**—It is stipulated that brick, stone or concrete foundations, piers or other supports, which are below the under surface of the lowest floor of basement (or basements), or where there is no basement, which are below the surface of the ground for the within described buildings and machinery, and also cost of all excavations of whatever nature, are not included in this insurance, and in no event will be taken as a part of the valuation of the buildings for the purpose of arriving at the Insured's contributory proportion in the application of the Co-Insurance Clause.

The foundations and cost of excavations above described being exempted from the application of the Co-Insurance Clause of this policy, and not being covered by this insurance, it is expressly stipulated that in the event of loss, if the insurance company should elect to rebuild, and it should be found necessary on account of statutory or other cause to replace said foundations or restore said excavations, in whole or in part, the cost of doing so shall be at the expense of the Insured.

The above Foundation Exclusion Clause is applicable only when the Building Coverage is written subject to Co-Insurance. It may be voided by endorsement when coverage on Foundations is desired.

6. **Loss Clause**—Any loss hereunder shall not reduce the amount of this policy.

7. **Minimum Retained Premium**—If this policy is cancelled at the request of the Insured, the premium retained by the Company shall be not less than the minimum provided in the short rate rules.

8. **Liberalization Clause**—If during the period that insurance is in force under this policy, or within 45 days prior to the inception date thereof, on behalf of this Company there be adopted, or filed with and approved or accepted by the insurance supervisory authorities, all in conformity with law, any changes in the form attached to this policy by which this form of insurance could be extended or broadened without increased premium charge by endorsement or substitution of form, then such extended or broadened insurance shall inure to the benefit of the Insured hereunder as though such endorsement or substitution of form had been made.

9. **Electrical Apparatus**—This Company shall not be liable for any loss resulting from any electrical injury or disturbance to electrical appliances, devices, fixtures or wiring caused by electrical currents artificially generated unless fire ensues, and, if fire does ensue, this Company shall be liable only for its proportion of loss caused by such ensuing fire.

10. **Work and Materials**—Permission granted for such use of the premises as is usual and incidental to the occupancy as herein described.

11. **Operation of Building Laws**—This Company shall not be liable for loss occasioned directly or indirectly by enforcement of any local or state ordinance or law regulating the construction, repair or demolition of building(s) or structure(s), unless such liability is otherwise specifically assumed by endorsement hereon.

12. **Fire Protection**—In consideration of the rate at which this policy is written, it is a condition of this policy that the Insured shall: (1) exercise due diligence in maintaining in complete working order all equipment and services (so far as they are within the control of the Insured) installed for the detection, prevention and extinguishment of fire at or in the property covered by this policy; (2) give immediate notice of any impairment in or suspension of such protective services (within the knowledge of the Insured) to this Company or the Rating Bureau having jurisdiction; and, (3) make no change in any sprinkler system, its water or chemical supplies, or any watchman service unless immediate notification is given to this Company or the Rating Bureau having jurisdiction.

Failure to comply with the above provisions shall suspend this insurance as respects the location where the breach exists for the duration of the breach.

13. **Mortgagee Clause (This entire clause is void unless name of mortgagee or trustee is inserted on the first page of this policy in space provided under this caption)**—Loss, if any on the item(s) subject to this clause as specified on the first page of this policy, shall be payable to the mortgagee (or trustee) as provided herein, as interest may appear, and this insurance, as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy. Provided, That in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided also, That the mortgagee (or trustee) shall notify this Company of any change of ownership or occupancy or increase of hazard, which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon, and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this policy shall be null and void.

This Company reserves the right to cancel this policy at any time as provided by its terms, but, in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for ten days after notice to the mortgagee (or trustee) of such cancellation, and shall then cease, and this Company shall have the right, on like notice, to cancel this agreement.

Whenever this Company shall pay the mortgagee (or trustee) any sum for loss under this policy and shall claim that, as to the mortgagor or owners, no liability therefor existed, this Company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payments shall be made, under all securities held as collateral to the mortgage debt, or may at its option pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of his, her or their claim.

14. **Nuclear Clause**—The word "fire" in this policy or endorsements attached hereto is not intended to and does not embrace nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, and loss by nuclear reaction or nuclear radiation or radioactive contamination is not intended to be and is not insured against by this policy or said endorsements, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by "fire" or any other perils insured against by this policy or said endorsements; however, subject to the foregoing and all provisions of this policy, direct loss by "fire" resulting from nuclear reaction or nuclear radiation or radioactive contamination is insured against by this policy.

THE PROVISIONS PRINTED ON THE REVERSE SIDE OF THIS FORM ARE HEREBY REFERRED TO AND MADE A PART HEREOF [illegible]

PARLIAMENT

MEMORANDUM

TO: Ted Sandler - Ackerman **Subject:** Edyth Lefcoe
AF 25012

FROM: Rick Odess

Date April 25, 1975 19

The above captioned policy comes up for anniversary on 5-26-75. As you know, this risk had a fire loss on 4-20-75. We will be checking with our claim department as to the extent of the loss and when it can be repaired. However, upon anniversary, we will have to have a 25% surcharge. I feel that this is really not manual business due to the fact that this is a 50 year old building; with cooking in the apartments, space heaters, and a deteriorating area. Please call or write with your advices.

U7

[15]

Q You did?

A I did because of the instructions from the office. I had rather lose a customer than a company.

Q When you refer to instructions from the office, what office do you mean?

A The office that said to get the 38-F signed regarding the twenty-five percent increase in the premium or that they would have to get off.

Q You are talking about the office of the carrier, now, Southern Underwriters, who directed you to do that?

A Well, they never directed us. They don't have to direct us. We're underwriters in our office. *When an account appears at such a bad location, it's a bad account, which old hotels are in the downtown area. As you know, they're firetraps; and the only reason that these were written at manual rates to begin with was because of the pressure of Mr. Ackerman, (owner of the agency) who had a love for the Lefcoes, and who persuaded the companies to do this, but it was against good underwriting practice.*

Q It was your decision, then, to issue the cancellation notice at that time?

A Because if I didn't, they would have gotten a direct order from the Company. The company

ACKERMAN INSURANCE AGENCY, INC.
Suite 624 Biscayne Building
39 West Flagler Street
MIAMI, FLORIDA 33130
Telephone: 371-2611

TO Edyth Lefcoe
ATTENTION
STREET 2120 S.W. 21st Street
CITY Miami, FL 33145 STATE

SUBJECT Saragossa Apts
Parliament #AF 25012 & Highlands #F 765602
REPLY ATT'N OF
DATE 5-2-75

Dear Mrs. Lefcoe:

We have currently been advised by the carriers, captioned, of the fire hazard coverage on your apartment building, that due to the age of the building and with cooking and space heaters in same that this risk does not really meet — standard manual business.

Therefore, both Companies have advised us that they are not willing to continue coverage unless we increase the rates by a 25% surcharge. This will raise the annual premium from $794.00 to approximately $923.00 annually on each policy.

Should this meet with your approval, sign and return the enclosed forms where indicated. Please keep

in mind that failure to accept the increase will most likely result in cancellation of these policies and that we have no other outlet with which to replace coverage at standard rates on a building of this age.

Yours truly,

/s/ T. T. Sandler

T. T. SANDLER,
Vice Pres.

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Petition for Writ of Certiorari and Appendix were deposited in a United States mailbox first-class postage prepaid, addressed to John W. Prunty, Attorney for Respondent, Edyth Lefcoe, 837 City National Bank Building, Miami, Florida, 33130 in compliance with Rule 28.3 of the Supreme Court Rules on February 25, 1983.

KATHLEEN V. McCARTHY, ESQ.

Attorney for Petitioner
PARLIAMENT INSURANCE CO.
18191 NW 68th Avenue
Hialeah, Florida 33015
(305) 556-1770